

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/689,762	RUNEMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Necholus Ogden, Jr.	1796	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 5-9-08.
2. ☒ The allowed claim(s) is/are 1-3,6-8,10-18,20-25,27,29,32 and 34-46.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application  |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>9-9-08</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment  |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance                       |
|  | 9. <input type="checkbox"/> Other _____.   |

//Necholus Ogden, Jr.//  
Primary Examiner, Art Unit 1796

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Travis Boone on September 9, 2007.

The application has been amended as follows:

Claim 1, line 6, after " bacterial strains" insert therefore ----includes at least *Lactobacillus plantarum*----;

Claim 1, line 9, after "lipid phase is" delete therefore "non-polar" and insert therefore ---at least one olive oil, canola oil, coconut oil, palm kernel oil, peanut oil, soy bean oil, dimethicone, paraffin oil, or petrolatum---;

Delete claims 4 and 5;

Claim 6, after "claim" delete therefore "5" and insert therefore ---1---;

Delete claim 9;

Claim 21, line 6, after " bacterial strains" insert therefore ----includes at least *Lactobacillus plantarum*----;

Claim 21, line 9, after "lipid phase is" delete therefore "non-polar" and insert therefore ---at least one olive oil, canola oil, coconut oil, palm kernel oil, peanut oil, soy bean oil, dimethicone, paraffin oil, or petrolatum---;

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Claim 23, line 6, after " bacterial strains" insert therefore ----includes at least Lactobacillus plantarum----;

Claim 23, line 9, after "lipid phase is" delete therefore "non-polar" and insert therefore ---at least one olive oil, canola oil, coconut oil, palm kernel oil, peanut oil, soy bean oil, dimethicone, paraffin oil, or petrolatum---;

Delete claims 30, 31 and 33.

Claim 43, line 6, after " bacterial strains" insert therefore ----includes at least Lactobacillus plantarum----;

Claim 43, line 9, after "lipid phase is" delete therefore "non-polar" and insert therefore ---at least one olive oil, canola oil, coconut oil, palm kernel oil, peanut oil, soy bean oil, dimethicone, paraffin oil, or petrolatum---.

2. The following is an examiner's statement of reasons for allowance: Applicant's 1.132 Declaration showed criticality with respect to the water activity wherein the water activity of 0.30 or less as claimed was found in compositions having a lipid phase and specifically lactic acid bacterial strains such as Lactobacillus plantarum, whereas the prior art of record, Gordon, does not suggest or appreciate the water activity, which in turn predicts the growth of microorganisms, and several compositions of Gordon would actually harm or kill the bacteria. Accordingly, it would not have been obvious to one of ordinary skill in the art to comprise the hygiene tissue with the specific Lactobacillus plantarum and a lipid phase as claimed with a water activity of less than 0.30 and therefore the claims are allowable.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden, Jr. whose telephone number is 571-272-1322. The examiner can normally be reached on M-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Necholus Ogden, Jr./  
Primary Examiner  
Art Unit 1796

9-9-08

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